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By: **Delegate Bromwell**

Introduced and read first time: February 24, 2004

Assigned to: Rules and Executive Nominations

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A BILL ENTITLED

1 AN ACT concerning

2 **Department of Health and Mental Hygiene - Employment Agencies -**  
3 **Nursing Referral Services**

4 FOR the purpose of providing for the establishment of certain nursing referral  
5 services; prohibiting certain nursing referral services from having an  
6 employment relationship with certain individuals; requiring certain individuals  
7 to be licensed by the Department of Health and Mental Hygiene before  
8 operating certain nursing referral services; requiring the Department to adopt  
9 certain regulations; requiring certain nursing referral services to develop and  
10 implement certain procedures relating to the screening of certain licensed  
11 health professionals or certain care providers; requiring the Department to issue  
12 a certain license under certain circumstances; authorizing the Department to  
13 suspend or revoke a certain license under certain circumstances; providing for  
14 certain penalties for certain violations; altering certain definitions so as to  
15 exclude certain nursing referral services and certain nurse registries from  
16 certain provisions that regulate employment agencies, home health agencies,  
17 and residential service agencies; defining certain terms; making this Act an  
18 emergency measure; and generally relating to nursing referral services.

19 BY repealing and reenacting, with amendments,  
20 Article - Business Regulation  
21 Section 9-101(d)  
22 Annotated Code of Maryland  
23 (1998 Replacement Volume and 2003 Supplement)

24 BY repealing and reenacting, with amendments,  
25 Article - Health - General  
26 Section 19-401(c) and 19-4A-01(e)  
27 Annotated Code of Maryland  
28 (2000 Replacement Volume and 2003 Supplement)

29 BY adding to  
30 Article - Health - General  
31 Section 19-4B-01 through 19-4B-04, to be under the new subtitle "Subtitle 4B.

1 Nursing Referral Services"  
2 Annotated Code of Maryland  
3 (2000 Replacement Volume and 2003 Supplement)

4 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
5 MARYLAND, That the Laws of Maryland read as follows:

6 **Article - Business Regulation**

7 9-101.

8 (d) (1) "Employment agency" means a person who, for a fee:

9 (i) obtains, offers to obtain, or attempts to obtain:

10 1. an employee for a person who seeks an employee; or

11 2. employment for a client;

12 (ii) provides to a client information to enable the client to obtain  
13 employment;

14 (iii) obtains, offers to obtain, or attempts to obtain employment or  
15 an engagement in connection with an entertainment, exhibition, or performance,  
16 including:

17 1. a ballet;

18 2. a circus;

19 3. a concert;

20 4. the legitimate theater;

21 5. modeling;

22 6. a motion picture;

23 7. an opera;

24 8. a phonograph recording;

25 9. the radio;

26 10. a transcription;

27 11. television;

28 12. the variety field; or

29 13. vaudeville; or

1 (iv) 1. obtains, offers to obtain, or attempts to obtain an alien  
2 labor certification or immigrant visa for an individual; and

3 2. participates directly or indirectly in the recruitment or  
4 supply of an individual who resides outside of the continental United States for  
5 employment in the continental United States.

6 (2) "Employment agency" does not include a person who merely:

7 (i) conducts a business that directly employs individuals to provide  
8 part-time or temporary services to another person;

9 (ii) as a lawyer, directly obtains an immigrant visa for an  
10 individual; [or]

11 (iii) conducts a business that:

12 1. receives a fee that is paid wholly by an employer;

13 2. does not collect money from an individual seeking  
14 employment; and

15 3. does not require an individual seeking employment to  
16 make a contract; OR

17 (IV) OPERATES A NURSING REFERRAL SERVICE THAT IS LICENSED  
18 UNDER TITLE 19, SUBTITLE 4B OF THE HEALTH - GENERAL ARTICLE.

19 **Article - Health - General**

20 19-401.

21 (c) (1) "Home health care" means any of the following services that are  
22 provided under the general direction of a licensed health professional practicing  
23 within the scope of their practice act:

24 (i) Audiology and speech pathology;

25 (ii) Dietary and nutritional services;

26 (iii) Drug services;

27 (iv) Home health aid;

28 (v) Laboratory;

29 (vi) Medical social services;

30 (vii) Nursing;

31 (viii) Occupational therapy;

1 (ix) Physical therapy; OR

2 (x) Provision of medically necessary sickroom equipment and  
3 supplies[; or

4 (xi) A nurse registry that is an employment agency under the  
5 provisions of the Maryland Employment Agency Act].

6 (2) However, the provisions of this subsection do not apply to:

7 (I) A NURSING REFERRAL SERVICE THAT IS LICENSED UNDER THE  
8 PROVISIONS OF SUBTITLE 4B OF THIS TITLE; OR

9 (II) [a] A home-based hospice care program that is licensed as a  
10 home-based hospice care program under the provisions of Subtitle 9 of this title.

11 (3) A home health agency shall also be licensed as a hospice care  
12 program if the home health agency operates a hospice care program that is distinct  
13 from its other services.

14 19-4A-01.

15 (e) (1) "Residential service agency" means any person that is engaged in a  
16 nongovernmental business of employing or contracting with individuals to provide  
17 home health care for compensation to an unrelated sick or disabled individual in the  
18 residence of that individual.

19 (2) "Residential service agency" includes[:

20 (i) Any] ANY agency that employs or contracts with individuals  
21 directly for hire as home health care providers[; or

22 (ii) A nurse registry that is an employment agency under the  
23 provisions of the Maryland Employment Agency Act that:

24 1. Screens or refers individuals for a client's selection or  
25 rejection, as its sole business operation; and

26 2. Does not itself provide any home health care service].

27 (3) "Residential service agency" does not include:

28 (i) A home health agency that is licensed under the provisions of  
29 Subtitle 4 of this title;

30 (ii) A person required to be licensed as a home health agency under  
31 the provisions of Subtitle 4 of this title;

32 (iii) A home-based hospice care program that is licensed under the  
33 provisions of Subtitle 9 of this title;

1 (iv) A hospital that is licensed under the provisions of Subtitle 3 of  
2 this title;

3 (v) A related institution that is licensed under the provisions of  
4 Subtitle 3 of this title;

5 (vi) Personal care providers under the Medical Assistance Personal  
6 Care Program;

7 (vii) Any person practicing a health occupation that the person is  
8 authorized to practice under the Health Occupations Article;

9 (VIII) A NURSING REFERRAL SERVICE THAT IS LICENSED UNDER  
10 SUBTITLE 4B OF THIS TITLE;

11 [(viii)] (IX) A group of persons licensed under the same title of the  
12 Health Occupations Article practicing as a business; or

13 [(ix)] (X) Residential rehabilitation services providers approved  
14 under regulations adopted by the State Mental Health Authority.

15 SUBTITLE 4B. NURSING REFERRAL SERVICES.

16 19-4B-01.

17 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS  
18 INDICATED.

19 (B) "CARE PROVIDER" MEANS AN INDIVIDUAL WHO PROVIDES HEALTH CARE  
20 SERVICES AND ASSISTANCE TO A CLIENT IN THE ACTIVITIES OF DAILY LIVING,  
21 INCLUDING:

22 (1) BATHING, TOILETING, AND PERSONAL HYGIENE;

23 (2) DRESSING;

24 (3) MEAL PREPARATION AND EATING;

25 (4) COMPANIONSHIP; AND

26 (5) ASSISTANCE IN PHYSICAL TRANSFER AND AMBULATION.

27 (C) "HOME HEALTH AID SERVICES" MEANS PERSONAL AND HEALTH CARE  
28 SERVICES DELIVERED TO A CLIENT BY A CARE PROVIDER.

29 (D) "LICENSE" MEANS A NURSING REFERRAL SERVICE LICENSE.

30 (E) "LICENSED HEALTH PROFESSIONAL" MEANS AN INDIVIDUAL WHO IS  
31 LICENSED OR CERTIFIED UNDER THE HEALTH OCCUPATIONS ARTICLE TO PROVIDE  
32 HEALTH CARE SERVICES.

1 (F) "NURSING REFERRAL SERVICE" MEANS ONE OR MORE INDIVIDUALS  
2 ENGAGED IN THE BUSINESS OF SCREENING OR REFERRING INDEPENDENT  
3 CONTRACTORS WHO ARE LICENSED HEALTH PROFESSIONALS OR CARE PROVIDERS  
4 TO CLIENTS FOR THE PROVISION OF SKILLED OR CERTIFIED NURSING SERVICES,  
5 HOME HEALTH AID SERVICES, OR OTHER HOME HEALTH CARE SERVICES IN THE  
6 RESIDENCE OF THE CLIENT.

7 19-4B-02.

8 (A) (1) A NURSING REFERRAL SERVICE MAY RECEIVE A FEE OR OTHER  
9 COMPENSATION FOR PROVIDING A SERVICE AS A REFERRAL SOURCE FOR CLIENTS  
10 AND INDEPENDENT CONTRACTORS.

11 (2) A NURSING REFERRAL SERVICE IS NOT RESPONSIBLE FOR PAYING  
12 ANY PART OF THE COMPENSATION TO THE LICENSED HEALTH CARE PROFESSIONALS  
13 OR CARE PROVIDERS THAT THE NURSING REFERRAL SERVICE SCREENS OR REFERS  
14 TO CLIENTS FOR SERVICES.

15 (3) A NURSING REFERRAL SERVICE MAY PROVIDE ADMINISTRATIVE  
16 ASSISTANCE FOR CLIENTS.

17 (B) A NURSING REFERRAL SERVICE MAY NOT HAVE AN EMPLOYMENT  
18 RELATIONSHIP WITH THE LICENSED HEALTH CARE PROFESSIONALS OR CARE  
19 PROVIDERS THAT IT SCREENS OR REFERS TO CLIENTS.

20 (C) A NURSING REFERRAL SERVICE SHALL:

21 (1) OBTAIN A LICENSE FROM THE DEPARTMENT PRIOR TO OPERATING  
22 AS A NURSING REFERRAL SERVICE;

23 (2) DEVELOP AND IMPLEMENT A PROCEDURE TO SCREEN LICENSED  
24 HEALTH PROFESSIONALS AND CARE PROVIDERS THAT INCLUDES THE FOLLOWING:

25 (I) A STATE CRIMINAL BACKGROUND CHECK;

26 (II) VERIFICATION OF CURRENT LICENSURE OR CERTIFICATION  
27 UNDER THE HEALTH OCCUPATIONS ARTICLE;

28 (III) A BASIC HEALTH SCREENING, INCLUDING A TUBERCULOSIS  
29 SCREENING;

30 (IV) VERIFICATION OF REFERENCES;

31 (V) VERIFICATION OF EMPLOYMENT HISTORY;

32 (VI) COMPLETION OF I-9 FORMS; AND

33 (VII) AN IN-PERSON INTERVIEW OF A LICENSED HEALTH  
34 PROFESSIONAL AND CARE PROVIDER BEFORE ANY REFERRAL OF THE INDIVIDUAL IS  
35 MADE TO A CLIENT;

1 (3) INSTITUTE AN INTERNAL CLIENT COMPLAINT INVESTIGATION  
2 PROCESS THAT INCLUDES:

3 (I) NOTICE TO THE CLIENT OR THE CLIENT'S REPRESENTATIVE OF  
4 THE COMPLAINT PROCESS; AND

5 (II) PROTOCOLS TO INVESTIGATE COMPLAINTS;

6 (4) PROVIDE NOTICE TO CLIENTS OF THE DEPARTMENT'S COMPLAINT  
7 HOTLINE NUMBER FOR COMPLAINTS ABOUT THE SERVICES PROVIDED BY AN  
8 INDIVIDUAL REFERRED BY THE NURSING REFERRAL SERVICE; AND

9 (5) ALLOW CLIENTS TO ACCEPT OR REJECT, AT THEIR DISCRETION, ANY  
10 LICENSED HEALTH PROFESSIONAL OR CARE PROVIDER REFERRED BY THE NURSING  
11 REFERRAL SERVICE.

12 19-4B-03.

13 (A) THE DEPARTMENT SHALL ADOPT REGULATIONS THAT SET STANDARDS  
14 FOR THE CARE, TREATMENT, HEALTH, SAFETY, WELFARE, AND COMFORT OF  
15 INDIVIDUALS WHO RECEIVE HOME HEALTH CARE SERVICES THROUGH A NURSING  
16 REFERRAL SERVICE.

17 (B) THE DEPARTMENT SHALL ISSUE A 3-YEAR LICENSE TO A NURSING  
18 REFERRAL SERVICE AFTER THE NURSING REFERRAL SERVICE:

19 (1) COMPLETES AN APPLICATION FOR LICENSURE; AND

20 (2) PAYS A LICENSING FEE OF \$1,000 TO THE DEPARTMENT.

21 (C) A LICENSE SHALL EXPIRE ON THE THIRD ANNIVERSARY OF ITS EFFECTIVE  
22 DATE UNLESS:

23 (1) THE DEPARTMENT SUSPENDS OR REVOKES THE LICENSE; OR

24 (2) THE LICENSE IS RENEWED.

25 (D) THE DEPARTMENT MAY SUSPEND OR REVOKE A LICENSE ISSUED UNDER  
26 THIS SECTION IF THE NURSING REFERRAL SERVICE IS OPERATING IN VIOLATION OF  
27 THE REQUIREMENTS OF THIS SUBTITLE.

28 19-4B-04.

29 (A) AN INDIVIDUAL MAY NOT OPERATE OR ENGAGE IN, ATTEMPT TO OPERATE  
30 OR ENGAGE IN, OR HOLD ONE'S SELF OUT AS OPERATING OR ENGAGED IN THE  
31 BUSINESS OF A NURSING REFERRAL SERVICE UNLESS THE INDIVIDUAL IS LICENSED  
32 UNDER THIS SUBTITLE.

33 (B) (1) AN INDIVIDUAL WHO VIOLATES THIS SECTION IS GUILTY OF A  
34 MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A FINE NOT EXCEEDING \$1,000

1 FOR THE FIRST OFFENSE AND NOT EXCEEDING \$10,000 FOR EACH SUBSEQUENT  
2 OFFENSE.

3 (2) EACH DAY A VIOLATION IS CONTINUED AFTER THE FIRST  
4 CONVICTION IS A SEPARATE OFFENSE.

5 SECTION 2. AND BE IT FURTHER ENACTED, That this Act is an emergency  
6 measure, is necessary for the immediate preservation of the public health or safety,  
7 has been passed by a yea and nay vote supported by three-fifths of all the members  
8 elected to each of the two Houses of the General Assembly, and shall take effect from  
9 the date it is enacted.